

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CLIFFORD ALAN DILBERT,

Plaintiff,

v.

CDCR, R. FISHER,

Defendants.

Case No. 1:20-cv-00655-JLT-HBK (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

(Doc. 26)

In this action, the plaintiff filed his second amended complaint after the magistrate judge found that his first amended complaint failed to state a claim. (Doc. 25). Incorporated within the SAC was a motion requesting appointment of counsel and a motion for a temporary restraining order. (*Id.*) In response, the magistrate judge denied the motion for appointment of counsel and issued findings and recommendations recommending that the TRO be denied, and his SAC be dismissed for a failure to state a claim. (Doc. 26).

Plaintiff timely filed objections to the findings and recommendations. (Doc. 29.) Plaintiff also objects to the magistrate judge's order denying him appointment of counsel, which the Court will construe as a motion for reconsideration of that order. (*Id.*) Plaintiff argues that his two claims should be permitted to go forward and that the district court should grant a TRO preventing him from being transferred during the pendency of this action. (*Id.*)

First, the magistrate judge did not err in denying the request for appointment of counsel.

1 As the magistrate judge explained (Doc. 26 at 2–3), this record does not demonstrate that this is
2 the kind of “exceptional” case in which appointment would be appropriate. In addition, in
3 accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo
4 review of the findings and recommendations. Having carefully reviewed the entire file, the Court
5 finds them to be supported by the record and by proper analysis. Nothing in the objections
6 materially calls into question the reasoning provided by the magistrate judge regarding the
7 viability of the claims in the SAC or the TRO. Thus, the Court **ORDERS**:

- 8 1. The construed request for reconsideration of the magistrate judge’s denial of
9 Plaintiff’s request for appointment of counsel is **DENIED**.
- 10 2. The findings and recommendations, filed on July 28, 2023 (Doc. 26) are **ADOPTED**
11 **IN FULL**.
- 12 3. The Clerk of Court is directed to terminate any pending motions, close this case, and
13 enter judgment against plaintiff.

14
15 IT IS SO ORDERED.

16 Dated: **September 28, 2023**


UNITED STATES DISTRICT JUDGE